

**REMARKS**

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejection and objection present in the outstanding Office Action in light of the following remarks.

Claims 1-16 were pending in the instant application at the time of the outstanding Office Action. Of these claims, Claim 1 is independent, the remaining claims are dependent. Independent Claim 1 has been amended and dependent Claims 3, 10, and 13-16 to account for the amendment made to Claim 1. Claims 17-20 are newly presented. Thus, Claims 1-20 are currently pending.

Applicants are not conceding in this application the claims amended herein are not patentable over the art cited by the Examiner, as the present claim amendments are only for facilitating expeditious prosecution. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Applicants specifically state no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Claim 1 stands rejected under 35 USC § 112, second paragraph, as failing to distinctly point out and particularly claim the subject matter which applicant regards as the invention. Specifically, the claim was objected to because of the phrase “determining the optimal price for the product or service under experimentation?”. This phrase was

inadvertently introduced into the claim in the previous Amendment. As such, the claim has been rewritten without this phrase thereby obviating the rejection. This phrase has not, however, been struck through as the inadvertent addition was not underlined.

Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 1-16 stand rejected under 35 USC § 102(e) as being anticipated by Herz et al. (hereinafter "Herz"). Reconsideration and withdrawal of this rejection is respectfully requested.

As best understood, the invention set forth by Herz contemplates a system with the ability to automatically determine which products a shopper would be most likely to buy, and which offers a vendor should make available to the shopper in order to maximize the vendor's profit (paragraph 0002, lines 1-5). The system constructs and updates shopper profiles based on specific demographic information and history of their shopping behavior (paragraph 0002, lines 5-9). As explained in Herz, the profile of a shopper is assembled in any or all of three ways:

a.) Some information is solicited when the shopper first registers with the shopping service. This information might include demographic information or a survey of purchase interests.

b.) Demographic and/or consumer information about the shopper or similar shoppers is obtained from other databases, e.g., from a consumer database purchased from a credit-card company, or a database that correlates the response to telemarketing campaigns with demographic variables.

c.) Records of the information requested and the products purchased by the shopper are incrementally collected during shopping, as is explained below.

(Paragraphs 31-33)

These profiles are used to determine products and offers to present to shoppers. (Paragraph , lines 9-13) Herz provides an "On-Line Shopping Example" (Paragraphs 28-46) in which the use of a shopper profile is discussed. As explained in Herz, there are six (6) steps in the shopping experience of the Herz invention:

1. Profiles are collected which characterize shoppers and offers (Paragraphs 28-34);
2. Determine the Identity of Shopper (Paragraph 35);
3. Determine Shopper's Goals (Paragraph 36);
4. Select Offers (Paragraph 37);
5. Present selected offers to shopper (Paragraph 38); and
6. Update shopper's profile (Paragraphs 39-46)

Herz continues that a profile may store a "wealth of information" about each shopper, including:

- a.) number of times the shopper has used the on-line shopping system 10 (numeric),
- b.) average duration per use of the system (numeric),
- c.) total number of previous purchases (numeric),
- d.) average number of purchases per use of the system (numeric),
- e.) mean time spent considering an offer that is eventually accepted (numeric),
- f.) standard deviation of time spent considering an offer that is eventually accepted (numeric),
- (g-i) same as (a-f) but for the past month only,
- (m-r) same as (a-f) but for the "garment department" of the system only,
- s.) age of shopper (numeric),
- t.) gender of shopper (textual),
- u.) likely ethnicity of shopper as guessed from shopper's surname (textual),
- v.) first two digits of zip code (textual),
- w.) first three digits of zip code (textual),
- x.) entire five digit zip code (textual),
- y.) estimated average household income in shopper's zip code (numeric),
- z.) distance of shopper's residence from advertiser's nearest physical storefront (numeric),
- aa.) number of children shopper has (numeric),

- bb.) list of products about which shopper has previously requested information (associative),
- cc.) list of offers accepted to date by shopper (associative),
- dd.) list of offers for which the shopper is known to hold discount coupons previously issued (associative),
- ee.) written response by shopper to Rorschach inkblot test (textual),
- ff.) multiple choice responses by this shopper to 20 self image questions (20 textual attributes),
- gg.) list of on-line newspapers and magazines subscribed to by shopper (associative),
- hh.) list of other vendors from whom the shopper has accepted offers, as determined from the shopper's credit-card history (associative).

(Paragraphs 112-137)

The Herz application also provides that profiles are created for new shopper, albeit in an abbreviated (or "rapid") form. As stated in Herz,

The rapid profiling procedure can rapidly form a rough characterization of a new shoppers preferences by soliciting the shopper's feedback on a small number of key offers, thereby determining the values of certain key attributes, and perhaps also by determining a small number of other key attributes (e.g., age) of the new shopper, by on line queries, telephone surveys, or other means.

(Paragraph 155)

Given that a profile is used for each shopper to determine the similarity of shoppers (Paragraph 37), Herz is of necessity relying on historical information and as such the predictions of Herz do not reflect current market sensitivities. While the Office Action relies states that real-time tracking does occur (Page 2) in Herz, and cites the example of when a shopper has just bought ski goggles, the system might select offers of other ski-related equipment that is frequently bought along with ski goggles. This example, however, is of no moment as the pricing of the ski goggles is based on historical information, is not done in real-time, and does not reflect current market sensitivities.

The price and product determination system of Herz is in stark contrast to the present invention. As discussed in the specification and in the independent claim, the instant invention uses configuration data provided by an Internet merchant that operates the web site to create models that reflect current market sensitivities. These models are then used to determine the prices and offers that are made available to customers. There is no teaching or suggestion in Herz of a model that reflects current market sensitivities of the product through experimentation. In fact, there is no teaching or suggestion in Herz of any type of real-time tracking or computation of information.

Specifically, it is respectfully submitted that there is a stark distinction between promotion determination based upon user profiles and behaviors and running experiments on randomly chosen visitors for which profiling or prior data concerning the visitor is not a necessary element in the promotion determination. In this respect, it should be noted that in one embodiment of the present invention, customers who are not randomly selected for the experiment receive the standard promotion. (*See* ¶ 105) Further, by utilizing prior historical data concerning the visitor to determine a promotion, that promotion cannot, in effect, be a current determination of market sensitivities; rather it is a historically-based determination of user behavior.

In the Office Action, the Office cites Paragraphs 4-5, 6, 21, 33, 37, 278, and 308-309 (Page 4) to support the assertion that Herz meets the requirements of limitation (b) of the independent claim. A review of these paragraphs, however, demonstrates this is not the case. In fact, the words "random" or "randomly" do not appear in any of the cited paragraphs. As discussed above, at best Herz teaches the use of a historically-based

determination of user behavior. As such, there is no teaching in Herz of reflecting current market sensitivities as required by the independent claim.

Independent Claim 1 has been amended to more clearly define the present invention and now all of the pending claims as amended incorporate the subject matter of Claim 1 to require **“(a) receiving configuration data from the Internet merchant, wherein such configuration data comprises a sample size of visitors to the Internet website who are to participate in experiments and time-related information concerning the experiments; (b) randomly choosing visitors to the website to participate in the experiments according to the configuration data; (c) running the experiments according to the configuration data on the randomly chosen visitors to create a model that reflects current market sensitivities concerning the product”**. (see Specification at ¶¶ 85, 86, and 105)

While the above discussion has been directed to the independent claim, Applicants would like to now discuss specific dependent claims. The dependent claims are patentable over Herz et al. for reasons in addition to those set out above with respect to the independent claim.

Dependent Claims 15 and 16 additionally require **"automatically updating the website to use the optimal price determined in step (d) if the optimal price meets a minimum threshold" and "the minimum threshold is that the optimal price determined in step (d) is a predetermined percentage better than a currently offered price for the product**. The Office cites Paragraphs 236 and 241 to support the rejection of these dependent claims. A review of these paragraphs, however, finds they do not support the rejection.

At best, Paragraph 241 merely indicates the offering price is adjusted to increase profits. The use of a “minimum threshold” or a “predetermined percentage” threshold is not taught. As best presently understood it appears as if Herz et al. teaches adjusting the offering price so long as the profit increases, regardless of how minute or miniscule an increase.

Newly presented dependent Claims 17-20 additionally require “wherein step (d) comprises determining a price that optimizes revenue,” “wherein step (d) comprises determining a price that optimizes market share,” “wherein step (d) comprises determining a price that optimizes customer satisfaction,” and “wherein step (d) comprises determining a price that optimizes a resource selected from the group consisting essential of shipping resources and manufacturing resources.” These claimed features (when combined with the remaining claim elements) are also not taught or suggested by Herz et al.

As can be seen by the argument shown above, there are numerous distinctions between the claimed invention and the teaching of Herz et al. (Not all of the distinctions, however, were discussed above.) Accordingly, Applicants respectfully submit that the Herz et al. does not anticipate the present invention because, at the very least, “[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under construction.” *W.L. Gore & Associates, Inc. v. Garlock*, 721 F.2d 1540, 1554 (Fed. Cir. 1983); *see also In re Marshall*, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978).

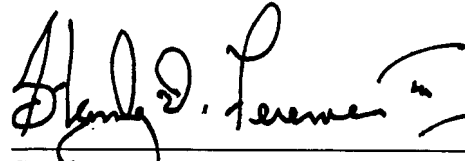
In view of the foregoing, it is respectfully submitted that independent Claim 1 fully distinguishes over the applied art and is thus allowable. By virtue of dependence

from Claim 1, it is thus also submitted that Claims 2-20 are also allowable at this juncture.

In summary, it is respectfully submitted that the instant application, including Claims 1-20, is presently in condition for allowance. Notice to the effect is hereby earnestly solicited.

Should the claims not be in condition for immediate allowance, the courtesy of a telephone interview is requested prior to the issuance of a further Office Action.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stanley D. Ference III", written over a horizontal line.

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